



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** October 1, 2020

**From:** City Manager

**Subject:** Brisbane Lunch Truck Patio Shelter

### **Recommendation**

Approve proposed temporary Shelter Patio addition at the Park N Ride site for Brisbane Lunch Truck.

### **Background**

The City Council approved a lease with Kristi Yawata, Brisbane Lunch Truck, Inc. at the November 7, 2019 Council meeting.

Article 6.01 of the agreement requires pre-approval of site improvements by the Public Works Director. This request is for a temporary Patio Shelter over the area currently used for outdoor siting and dining (COVID-19 conditioned).

The previous licensee placed a tent over this area that received mix reviews. This item is on Council agenda for review and approval In order to provide transparency. If the Council approves the structure will be subject to building department review and permit.

City Council received comments on this item asking several questions:

Safety of the Shelter – the proposed shelter will be subject to building permit review and inspection.

Liability/Insurance – Section 10 addresses Insurance requirement and Section 11 addresses damage and destruction. Section 17 is the Hold Harmless clause.

Removal of Shelter at termination of the lease – Section 6.04 and Section 20 assigns responsibility to remove all improvements to licensee.

### **Financial Impact**

There is no impact to the City by allowing for this structure. Earlier this year BLT was offered reduction of rent by 50% for 3 months (April, May and June). In June we renewed the reduction for the remainder of the calendar year. This was in direct response to COVID-19 impact on restaurant and food deliver business.

**Attachment**

1. Temporary Patio Shelter Picture
2. License Agreement

A handwritten signature in blue ink, appearing to read "Clay Holstine".

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Clay Holstine, City Manager



Kristi  
Brisbane Lunch Truck  
415-660-6320  
415-606-4602

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT**, dated November 8, 2019 between the City of Brisbane, a municipal corporation ("City") and Brisbane Lunch Truck, Inc., 346 Forest View Drive, South San Francisco, CA 94080 ("Licensee") is made with reference to the following facts:

A. City is the owner of certain real property in the City of Brisbane, County of San Mateo, State of California, located at 3501 Bayshore Boulevard, Brisbane, CA, depicted generally on Exhibit A.

B. Licensee desires to license from the City a portion of the City property, consisting of nine parking spaces as depicted in a black rectangular outline on Exhibit A ("the Licensed Property") for the purposes of providing a food truck operation and the City is willing to license such portion of its property to Licensee, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE, in consideration of the following promises, the parties agree as follows:**

### ARTICLE 1 LICENSED PREMISES

**1.01** City licenses to Licensee the Licensed Property.

**1.02** Licensee shall operate on the Licensed Property a food truck operation. Licensee shall maintain the Licensed Property. For the public's use only during the hours of the food truck operation, Licensee shall also provide and maintain a "porta-potty" in the diagonally hashed area of the City's property as also depicted on Exhibit A. Licensee shall service the porta-potty weekly; provided, however, if in the reasonable judgment of the City, the porta-potty needs servicing more than weekly, the City shall pay for such service. Other than as provided in the previous sentence, any and all costs of maintenance of the Licensed Property, the porta-potty, and the porta potty area shall be the sole and exclusive obligation of Licensee. Licensee expressly warrants that the City shall not be liable for any funds concerning costs associated with this License Agreement, whether for maintenance or otherwise, except as provided in this section 1.02.

### ARTICLE 2 TERM

**2.01** The term of this License shall be for 12 months or until either (a) the City, in its sole discretion, terminates this License or (b) this License is terminated as provided herein. If City in its sole discretion terminates this License without cause, it shall provide Licensee with 60 days written notice.

**ARTICLE 3  
LICENSE PAYMENT**

**3.01** Licensee shall pay to the Successor Agency for its use of the Licensed Premises the sum of \$575 monthly, prorated for November 2019 and then payable on the first day of each month during the term of this License Agreement.

**3.02** Licensee shall hold the City harmless from and against all insurance premiums, carrying charges, costs, expenses, property or other taxes or assessments, and obligations of every kind and nature whatsoever relating to the Licensed Property which may arise, accrue, or become due during the term of this License.

**ARTICLE 4  
POSSESSION, USE AND HOURS OF OPERATION**

**4.01** The Licensed Property shall be used by Licensee solely for the purpose of conducting a food truck operation and for no other or additional purpose without the prior written approval of the City. Licensee may allow its food truck to remain on the Licensed Property even when the Licensee is not actively conducting the food truck business.

**4.02** Licensee shall not use the Licensed Property or permit anything to be done in or about the Licensed Property which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be in force. Licensee shall not use or allow the Licensed Property to be used for any unlawful or objectionable purpose, nor shall Licensee cause, maintain or permit any nuisance in, on or about the Licensed Property or commit or suffer to be committed any waste in, on or about the Licensed Property.

**4.03** Licensee shall provide consistent and advertised hours of operation Monday through Friday between 11 a.m. and 3 p.m. other than on holidays when other uses on the property will preclude the use the Licensed Property for food truck operation purposes. Licensee may request additional hours of operation that City may approve in its sole discretion. Licensee shall notify City in writing if Licensee will be unable to conduct the food truck operation for one or more weeks. Licensee may provide signage concerning the food truck operation subject to the City Engineer's approval of such signage.

**ARTICLE 5  
CONDITION OF LICENSED PROPERTY**

**5.01** Licensee acknowledges and agrees that the Licensed Property is being licensed to Licensee in "AS IS" condition and the Successor Agency shall have no obligation to make any alterations or improvements to the Licensed Property for the benefit of Licensee. Licensee further acknowledges that neither the City nor anyone acting on City's behalf has made any representation or warranty as to the suitability or fitness of the

Licensed Property for the intended use thereof by Licensee and it is the sole responsibility of Licensee to satisfy itself with respect to all such matters.

## **ARTICLE 6 IMPROVEMENTS**

**6.01** Licensee shall install on the Licensed Property only those improvements, such as a connection for water and/or sewer service as approved by the Public Works Director of the City of Brisbane.

**6.02** All fees and costs for construction of any improvements on the Licensed Property, including application and permit fees charged by the City of Brisbane and any other governmental agency, design and construction costs, and the cost of any financing obtained by Licensee for such improvements, shall be the sole responsibility and obligation of Licensee.

**6.04** Upon the termination of this License Agreement, Licensee shall remove from the Licensed Property, without cost, expense or obligation of any kind or nature to the City, all improvements.

## **ARTICLE 7 REPAIRS AND MAINTENANCE**

**7.01** Licensee shall, during the term of this License, at its own cost and expense, keep and maintain all the improvements which may be placed on the Licensed Property in good and neat order and repair and shall allow no nuisance to exist or be maintained therein. The City shall not be obligated to make any repairs of any kind, nature or description whatsoever to the Licensed Property or the improvements thereon.

## **ARTICLE 8 UTILITIES**

**8.01** Licensee shall pay the cost of all utility and other services furnished to the Licensed Property, including, but not limited to, electricity, gas, water, sewer, telephone, and garbage collection service. Whenever possible, Licensee shall establish a separate account and meter with the utility or service provided so that all charges for service are billed directly to Licensee.

## **ARTICLE 9 INDEMNITY**

**9.01** Licensee hereby waives any and all claims against the City for damage to any property or injury to or death of any person in, upon or about the Licensed Property, but not on property owned by the City but not within the Licensed Property, arising at any time and from any cause other than solely by reason of the negligence or willful misconduct of the City. Licensee shall indemnify, defend, and hold the City, and their officers, officials, boards, commissions, employees, and agents, harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including attorney's fees, occasioned by or in any way connected with the condition, use or misuse of the Licensed Property, or occasioned by any act or omission of Licensee and Licensee's agents, servants, employees, invitees or other persons who may come upon the Licensed Property, except for damage to any property or injury to or death of any person caused solely by the negligence or willful misconduct of the City. The indemnity obligations of Licensee set forth herein shall survive and continue beyond the term of this License.

## **ARTICLE 10 INSURANCE**

**10.01** Licensee shall, at no cost to the City, obtain and keep or cause to be kept in force during the term hereof, fire and extended coverage insurance on all improvements on the Licensed Property that are destructible by fire or such perils as insured by a Standard Form fire and extended coverage policy of insurance and in amounts not less than 100 percent of the insurable value of such improvements. The City shall be named in the loss payable clause of such policy, as its interest may appear. All policies placed by Licensee upon the Licensed Property shall contain waivers of any right of subrogation said insurer might otherwise have against the City.

**10.02** During the term of this License, Licensee shall procure and maintain in full force and effect at Licensee's expense: (i) comprehensive general liability insurance with an aggregate limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring against all liability of Licensee, the City for bodily injury and property damage arising out of or in connection with Licensee's maintenance, use, or occupancy of the Licensed Property and also insuring performance by Licensee of the indemnity provisions set forth in Section 9.01 of this License. The amount of such insurance shall be at least \$1,000,000.00, combined single limit. However, the amount of such general liability insurance shall not limit Licensee's liability nor relieve Licensee of any obligations under this License. The general liability insurance policy shall name the City, and their officers, officials, boards, commissions, employees, and agents, as an insured parties thereunder, and shall be endorsed to provide that: (i) the insurance coverage thereunder shall be primary with respect to the City; and (ii) no cancellation or reduction in coverage will be made without twenty (20) days prior written notice to the City by the carrier.

**10.03** Licensee shall provide the City with a copy of each insurance policy required to be maintained hereunder, and each such policy shall be subject to approval as to form, content and amount by the City or their authorized representatives.

## **ARTICLE 11 DAMAGE OR DESTRUCTION**



**11.01** In case of any damage to or destruction of the improvements on the Licensed Property, or any part thereof, and such damage is covered by insurance, Licensee shall have the election to: (i) utilize the insurance proceeds for the restoration, replacement or rebuilding of the improvements with such alterations and additions as may be approved by the City; or (ii) not restore the improvements so damaged or destroyed and apply the insurance proceeds to the clean-up and removal of the damaged or destroyed Improvements so as to restore the Licensed Premises to their condition at the time of execution of this License. Any balance of insurance proceeds shall be paid to Licensee.

**11.02** In the case of any damage to or destruction of the improvements which is not covered by the insurance required to be maintained under Section 10.01 hereof, and such damage exceeds fifty percent (50 percent) of the replacement cost of such Improvements, Licensee may, at its option, terminate this License by giving written notice of termination to the City. Otherwise, Licensee shall restore the Improvements to their original configuration or in such other manner as shall be approved in writing by the City.

## **ARTICLE 12 ASSIGNMENT AND SUBLETTING**

**12.01** Licensee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, pledge, hypothecate or encumber all or any part of Licensee's interest in this License or in the Licensed Property or any part thereof, without the City's prior written consent and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this License. The City may withhold its consent in the City's absolute and sole discretion.

**12.02** No consent by the City to any assignment or subletting by Licensee shall relieve Licensee of any obligation to be performed by Licensee under this License, whether occurring before or after such consent, assignment or subletting. The consent by the City to any assignment or subletting shall not relieve Licensee from the obligation to obtain the City's express written consent to any other assignment or subletting. The acceptance of payment by the City from any other person shall not be deemed to be a waiver by the City of any provisions of this License or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

## **ARTICLE 13 PERFORMANCE BY CITY ON LICENSEE'S DEFAULT**

**13.01** In the event that Licensee shall fail or neglect to do or perform any act or thing herein provided for it to be done or performed and such failure shall continue for a period of thirty (30) days after written notice from the City specifying the nature of the act or thing to be done or performed, or shall continue beyond the time reasonably required for the performance of any act if the same could not reasonably be performed within said thirty (30) day period, then the City may, but shall not be required to, perform or cause to be performed such act or thing (including the entering upon the Licensed Property for such purpose, if the City elects so to do), and the City shall not be liable or in any way



responsible for any loss, inconvenience, annoyance or damage resulting to Licensee on account thereof; and Licensee shall repay to the City, upon demand as additional rent, the entire reasonable cost and expense thereof, including compensation to the employees, agents and contractors of the City. Any act or thing done by the City, pursuant to the provisions of this Article 13 shall not be, or be construed as, a waiver of any covenant, term or condition herein contained or of the performance thereof.

## ARTICLE 14 BREACH

**14.01** Should Licensee or the City fail to perform or cause to be performed any act required hereunder, including, but not limited to, the following, such failure shall constitute an event of default on the part of Licensee or the City.

- (a) The failure for a period of more than thirty (30) days after written notice from the non-breaching party to the breaching party to do, observe, keep and perform any of the terms, covenants, agreements and provisions of this License which Licensee or the City is required to do, observe, keep or perform.
- (b) As to the Licensee, the permanent abandonment of the Licensed Property by Licensee without making adequate provision for the protection thereof; the adjudication of Licensee as a bankrupt; the making by Licensee of a general assignment for the benefit of creditors; the taking by Licensee of the benefit of any insolvency act or law; the appointment of a permanent receiver or trustee in bankruptcy for Licensee's property; or the appointment of a temporary receiver which is not vacated or set aside within one hundred and twenty (120) days from the date of such appointment.

**14.02** Any notice given under this Article shall specify the event of default and the applicable License provisions, and shall demand that the breaching party perform the provisions of this License within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this License provided the breaching party cures the default within the applicable period of time.

**14.03** In the event of a breach of this License and upon the failure of the breaching party to cure same after notice as provided in this Article, the non-breaching party, in addition to all other rights and remedies provided by law or equity, may, but is not obligated to, declare this License terminated by written notice to the breaching party, as of a date specified in the notice which shall not be less than thirty (30) days after the date of serving such notice, and, if the Licensee is the breaching party, in such event the City shall be entitled to re-enter and repossess the Licensed Property, together with the improvements thereon

**ARTICLE 15  
WAIVER**

**15.01** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by the City of any performance by Licensee after the time the same shall have become due shall not constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

**ARTICLE 16  
INSPECTION OF PREMISES**

**16.01** The City shall be entitled, at all reasonable times, to go upon and into the Licensed Property for the purpose of: (i) inspecting the same; (ii) inspecting the performance by Licensee of the terms and conditions of this License; and (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof as required or permitted by any law or ordinance. The aforesaid rights of the City shall be exercised so as not to unreasonably interfere with Licensee's use of the Licensed Property.

**ARTICLE 17  
HOLD HARMLESS**

**17.01** Should the City,, without fault on the City's part, be made a party to any litigation instituted by Licensee against any third party or by any third party against Licensee, Licensee shall save, defend, and hold the City harmless from any judgment rendered against the City or the Licensed Property or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by the City in connection with such litigation.

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**ARTICLE 18  
NOTICES**

**18.01** Any notices or other communications required or permitted to be given under this License shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, or by a delivery service such as Federal Express which provides a receipt or other written evidence of delivery, addressed to the other party at such address as may be furnished from time to time as the place for delivery of notices hereunder. Any notice or other communication sent by mail shall be deemed received on the third business day after deposit of the notice in the U.S. Mail with full postage prepaid

thereon. Pursuant to this section, notices or other communications shall be addressed to the following recipients:

If to the City:

City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
Attn: City Manager

If to Licensee: Brisbane Lunch Truck, Inc.  
346 Forest View Drive  
South San Francisco, CA 94080

## **ARTICLE 19 AUTHORITY OF LICENSEE TO EXECUTE LICENSE**

**19.01** Licensee represents and warrants to the City that: (i) this License is duly executed and delivered by and is binding upon and enforceable against Licensee; and (ii) Licensee has the capacity to enter into this License and consummate the transactions herein provided and nothing prohibits or restricts the right or ability of Licensee to carry out the terms hereof.

## **ARTICLE 20 SURRENDER**

**20.01** Upon the termination of this License, Licensee shall surrender the Licensed Property and remove all of Licensee's personal property and trade fixtures. Any personal property or trade fixtures not removed at the termination of this License shall be deemed abandoned by Licensee. Licensee shall also remove the improvements installed by Licensee and Licensee shall restore the Licensed Property to its condition prior to such installation.

**20.02** Should Licensee fail to remove any personal property or trade fixtures, or fail to remove the improvements as requested by the City, Licensee shall be liable to the City for any and all removal costs, transportation and storage expenses, and the cost of restoring the Licensed Property as required herein. Licensee shall indemnify the City against any loss, damage or liability resulting from delay by Licensee in so surrendering the Licensed Property.

## **ARTICLE 21 MISCELLANEOUS**

**21.01 Captions.** The captions used in this License are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision contained herein.

**21.02 Entire Agreement.** This License Agreement constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral. This License Agreement can only be modified by a written amendment hereto executed by both parties.

**21.03 Severability.** If any term or provision of this License shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this License shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

**21.04 Calendar Days.** All references herein to any acts or obligations to be performed within a certain number of days shall mean calendar days.

**21.05 Choice of Law.** This License shall be governed by and interpreted in accordance with the laws of the State of California.

**21.06 Successors and Assigns.** Subject to the restrictions against assignment and subletting by Licensee, this License shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

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IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

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/CITY OF BRISBANE:

BRISBANE LUNCH TRUCK, INC.

By:   
\_\_\_\_\_  
Clay Holstine, City Manager

  
\_\_\_\_\_  
Kristi Yawata

  
\_\_\_\_\_  
Tony Palmer

APPROVED AS TO FORM:

  
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Michael Roush, Legal Counsel